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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,161	12/21/2001	Uresh K. Vahalia	EMC-98-092 CON(1)	5930
24227	7590	03/16/2006	EXAMINER	
EMC CORPORATION OFFICE OF THE GENERAL COUNSEL 176 SOUTH STREET HOPKINTON, MA 01748			NGUYEN, DUSTIN	
			ART UNIT	PAPER NUMBER
			2154	
DATE MAILED: 03/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

1. Claims 50, 52-61, 63-65 are presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/11/2006 has been entered.

Information Disclosure Statement

3. Examiner requests Applicants to update status of any related cases as disclosed in the specification.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 50, 52-61, 63-65 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-1 of U.S. Patent No. 6,973,455 [hereinafter as '455 patent]. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming common subject matter as follow:

Taking claim 50 as an exemplary claim, the '455 patent contains the subject matter claimed in the instant application. As per claim 50, both applications are claiming common subject matter, as follows:

A method of accessing data in a data stored in a data storage location, the method comprising:

a server receiving ...;

in response to the request for data ...; and

using the metadata of the file,

The instant application does not specifically disclose the client using the command to the storage device over a transmission path by bypassing the data mover computer as disclosed in the '455 patent, but it would have been obvious to a person skill in the art at the time the invention was made to realize that the recited claim 50 of the instant application would perform

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the same method steps because the client accesses the data storage device from the metadata information provided by the server.

As per independent claim 61, it is also directed to the same subject matter recited in claim 50 above. Accordingly, it is provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

As per dependent claims 52-60, and 63-65, they are depending on rejected claims, they are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

6. Applicant's arguments with respect to claims 50, 52-61, 63-65 have been considered but are moot in view of the new ground(s) of rejection.

7. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Follansbee John can be reached on (571) 272-3968. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dustin Nguyen
Examiner
Art Unit 2154

 JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100